

BEFORE THE BOARD OF PLUMBERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment) NOTICE OF PUBLIC HEARING
of ARM 24.180.401, 24.180.404, and) ON PROPOSED AMENDMENT
24.180.407 general provisions, 24.180.504) AND ADOPTION
and 24.180.506 licensing and scope of)
practice, 24.180.601 and 24.180.604)
reciprocity licensure, and the proposed)
adoption of NEW RULE I temporary)
exemptions and NEW RULE II reciprocity)

TO: All Concerned Persons

1. On December 14, 2006, at 10:00 a.m., a public hearing will be held in room 489, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Plumbers no later than 5:00 p.m., on December 6, 2006, to advise us of the nature of the accommodation that you need. Please contact Dan Bernhardt, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2350; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsdlu@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.180.401 FEE SCHEDULE

- (1) Application fee (~~nonrefundable~~) \$ 30
(2) through (11) remain the same.

AUTH: 37-1-134, 37-69-202, 37-69-401, MCA

IMP: 37-1-134, 37-1-304, 37-1-305, 37-69-202, 37-69-307, 37-69-401,
MCA

REASON: The Board of Plumbers (board) determined it is reasonably necessary to amend ARM 24.180.401 and 24.180.404 to achieve consistency among the boards within the Business Standards Division of the department. Pursuant to 37-1-101, MCA, the department is required to standardize policies and procedures followed in providing administrative services to the licensing boards within the department. The department has mandated in rule at ARM 24.101.403 that all fees collected by and on behalf of the boards are nonrefundable. It has never been the board's practice to

refund any fees and the board is proposing to delete the provision at this time to abide by and not duplicate applicable department rules.

24.180.404 APPLICATIONS (1) through (3) remain the same.

~~(4) If an application is withdrawn, no refund of the application fee will be made.~~

(5) and (6) remain the same but are renumbered (4) and (5).

AUTH: 37-69-202, MCA

IMP: 37-69-303, MCA

24.180.407 EXAMINATIONS (1) through (3) remain the same.

(4) Requests for administration of examination on an alternate date must be submitted in writing to the department and include the proper fee. Requests must include the reason for the request, and a desired date of the examination. If the department approves the alternate date, it shall set a time and place thereof in its discretion.

(4) remains the same but is renumbered (5).

~~(5) (6)~~ Examination papers may be reviewed in the board office for a period of 60 days immediately following the examination date only. Note taking will be allowed during the time of review, but the notes must be left in the board office. ~~Questions on the review must be submitted in writing for response by the board.~~

(7) Appeals concerning the examination must be submitted in writing for response by the board.

(6) remains the same but is renumbered (8).

~~(7) (9)~~ When an applicant fails to take the first examination for which he was the applicant was scheduled, he may have his examination fee apply towards the next examination. However, if the applicant fails to take the next examination, his the fee shall be forfeited and application for any subsequent examination will require another examination fee.

AUTH: 37-69-202, MCA

IMP: 37-69-304, 37-69-305, 37-69-306, 37-69-307, MCA

REASON: It is reasonable and necessary to amend this rule as part of the board's periodic administrative rule review and to further the board's intent to provide current, clear, and well organized board rules. Section (4) is being added to specify the process for applicants to request alternate exam dates for reasons other than religious conflict, which is addressed in (3). This is not a new procedure, but the board determined that adding (4) will address confusion regarding alternate exam dates. The board estimates that one applicant a year will be affected by this rule change resulting in an estimated annual revenue increase of \$155.00, the difference between the regular examination fee of \$95.00 and the \$250.00 fee for administering the exam on an alternate date.

It is necessary to amend (6) and add (7) to this rule to clarify that the board will respond to written appeals of exam results, but not to questions during an exam review. Department staff administers the exam reviews, not board members.

The board determined it is reasonably necessary to amend (8) to delete the ability of applicants who miss the first examination to apply that fee to a subsequent exam. As the licensing examination is composed and administered by board staff, the same expenditure of staff time and effort is required, even when applicants fail to appear to take an exam. The board estimates that this amendment will affect approximately five license applicants a year, resulting in an annual revenue increase of \$475. At this time the board is also amending the rule to replace gender specific terms with gender neutral language.

24.180.504 QUALIFICATIONS - JOURNEYMAN (1) The board will accept the following documentation of experience for journeyman plumbers:

- (a) a notarized statement ~~or letter~~ from a licensed master plumber(s) or a licensed plumbing contractor(s) certifying the time and dates of employment and the type of plumbing work that was performed during the applicant's employment. Verification statements ~~or letters~~ must verify five years of actual experience in the field of plumbing, at a minimum of 1500 hours per year;
- (b) through (2) remain the same.

AUTH: 37-69-202, MCA
IMP: 37-69-304, MCA

REASON: The board determined it is reasonably necessary to amend this rule as part of the board's periodic administrative rule review. The board concluded that the terms "notarized statement" and "notarized letter" are repetitive and that a notarized statement is sufficient to document applicant experience.

24.180.506 QUALIFICATIONS - MASTER (1) The board will accept the following documentation of experience for master plumbers:

- (a) A notarized statement ~~or letter~~ from a licensed master plumber(s) or a licensed plumbing contractor(s) certifying time and dates of employment of applicant as a journeyman plumber and the type of plumbing work performed, which must include evidence ~~that three of the required four years were served in the supervisory capacity of three years of experience working with a licensed master plumber or in a supervisory capacity in the field of plumbing.~~
- (b) through (2) remain the same.

AUTH: 37-69-202, MCA
IMP: 37-69-305, MCA

REASON: The board determined it is reasonably necessary to amend this rule as part of the board's periodic administrative rule review. The board concluded that the terms "notarized statement" and "notarized letter" are repetitive and that a notarized statement is sufficient to document applicant experience. Additionally, the board is amending the rule to be consistent with the requirements in 37-69-305, MCA, in that the experience can be obtained either working with a licensed master plumber or in a supervisory capacity in the field of plumbing.

24.180.601 INVESTIGATION (1) remains the same.

~~(2) The character, experience and fitness of the applicant shall also be taken into consideration.~~ The board reserves the right to investigate any applicant, or application filed, and approve or disapprove the same. Upon acceptance or rejection of any application, the board will immediately notify applicant at the address given in his the application.

AUTH: 37-69-202, MCA

IMP: 37-1-308, 37-69-304, 37-69-305, MCA

REASON: It is reasonable and necessary to amend this rule as part of the board's periodic administrative rule review. The board is deleting the language regarding applicants' character, experience, and fitness because it is wholly subjective, and there exist no tangible guidelines available to establish such qualifications. The board concluded that the licensure requirements in statute and rule are adequate to ensure the Montana public is protected through the licensure of qualified plumbers.

24.180.604 OUT-OF-STATE APPLICANTS -RECIPROCITY (1) and (2) remain the same.

~~(3) The board may enter into a written reciprocal agreement for a journeyman license with the license authority of another state or jurisdiction if the following conditions are met and are reviewed annually to ensure ongoing equivalent standards:~~

~~(a) the state requires five years of actual and documented experience in the field of plumbing;~~

~~(b) the state's examination is based on the uniform plumbing code;~~

~~(c) the state requires both a written and practical portion on their examination;~~

~~(d) the state requires a minimum passing score of 70% on their examination;~~

~~(e) a current copy of that state's requirements must be kept on file at the board office; and~~

~~(f) the reciprocal agreement must be approved by the board in open session and executed by signature of the presiding chairperson.~~

AUTH: 37-69-202, MCA

IMP: 37-1-304, MCA

REASON: It is reasonably necessary to amend this rule as part of the board's periodic administrative rule review and to further the board's intent to provide current, clear, and well organized board rules. The board determined that for purposes of clarity and ease of use, rules for out-of-state applicants and applicants by reciprocity should be addressed in separate rules. The board is proposing New Rule II to address licensure by reciprocity.

4. The proposed new rules provide as follows:

NEW RULE I TEMPORARY EXCEPTIONS (1) The board may approve a temporary resolution of a county, city, or town or the board of directors or managers of a water or sewer district or water utility to authorize an unlicensed person to perform plumbing work if:

- (a) there is not a licensed plumber within a 100 mile radius; and
- (b) reasonable notice has been submitted to the board in accordance with 37-69-102, MCA.

(2) The type of plumbing work is restricted to repair and maintenance of an existing plumbing system only.

(3) The county, city, or town or the board of directors or managers of a water or sewer district, or water utility shall be required to reapply for board approval every three years from the date of board approval, or at the time a new unlicensed person has been delegated, whichever occurs first.

AUTH: 37-1-131, 37-69-202, MCA

IMP: 37-69-102, 37-69-103, MCA

REASON: It is reasonable and necessary to propose New Rule I as part of the board's periodic administrative rule review and to further the board's intent to provide current, clear, and well organized board rules. The board determined there is a need to further implement and delineate by rule the requirements set forth at 37-69-102(3) and (4), MCA. The board concluded that adoption of this new rule will provide much needed guidelines to assist counties, cities, towns, water or sewer districts, or water utilities in seeking board exception to utilize unlicensed persons for plumbing work on a temporary basis.

NEW RULE II RECIPROCITY (1) The board may enter into a written reciprocal agreement for journeyman licensure with the license authority of another state or jurisdiction if the following conditions are met and are reviewed annually to ensure ongoing equivalent standards:

- (a) the state requires five years of actual and documented experience in the field of plumbing;
- (b) the state's examination is based on the uniform plumbing code;
- (c) the state requires both a written and practical portion on the state's examination; and
- (d) the state requires a minimum passing score of 70% on their examination.

(2) A current copy of the reciprocal state's requirements must be kept on file at the board office.

(3) The board shall approve the reciprocal agreement in open session and shall execute the agreement by the presiding chairperson's signature.

AUTH: 37-1-131, 37-69-202, MCA

IMP: 37-1-304, MCA

REASON: It is reasonable and necessary to propose New Rule II in accordance with the proposed amendment to ARM 24.180.604. The board decided to maintain separate rules for licensure of out-of-state applicants separate and for licensure by

reciprocity. The requirements in this new rule are identical to those previously set forth in ARM 24.180.604 and have been renumbered solely for clarity and to comply with ARM formatting requirements.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Plumbers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to dlibsdpplu@mt.gov, and must be received no later than 5:00 p.m., December 22, 2006.

6. An electronic copy of this Notice of Public Hearing is available through the department and board site on the World Wide Web at www.plumbers.mt.gov. The department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The Board of Plumbers maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Plumbers administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Plumbers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2309, e-mailed to dlibsdpplu@mt.gov, or made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

9. Don Harris, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PLUMBERS
TIM REGAN, CHAIRPERSON

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State November 13, 2006